

**U.S. District Court  
Central Illinois District, Springfield Division**

Central Laborers' Pension Fund	)
	)
Complainant	)
	)
United States Army Contracting Command	)
Rock Island Arsenal	)
	)
Respondent	)

**COMPLAINT FOR RELIEF PURSUANT  
TO THE FREEDOM OF INFORMATION ACT**

NOW COMES the Central Laborers' Pension Fund, and for its Complaint against the United States Army, Contracting Command, Rock Island Arsenal, pursuant to the Freedom of Information Act at 5 U.S.C. 552 *et.seq.* states as follows.

1. This cause of action is based on the Freedom of Information Act and seeks relief due to the withholding of information requested by the Complainant on March 5, 2019 from the United States Army, Contracting Command, Rock Island Arsenal ("RI Arsenal").
2. The District Court has jurisdiction over this cause of action pursuant to §552(a)(4)(B) "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. 552(a)(4)(B).
3. Venue is proper in the Central District, Springfield Division as a complaint may be filed in the district "in which the complainant . . . has his principal place of business . . ." 5 U.S.C. 552(a)(4)(B).
4. The Plaintiffs' administrative office is in Jacksonville, Illinois.

5. Under the Freedom of Information Act (“FOIA”), with some exceptions not applicable here, “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.” 5 U.S.C. 552(a)(3)(A).

6. After receiving a request for records, an agency shall determine within 20 days after the receipt of any such request whether to comply with such request, and shall immediately notify the person making such request of such determination and the reasons for the determination. 5 U.S.C 552(6)(A)

7. On March 5, 2019, Complainant sent, via email, a FOIA request for documents related to construction work performed by Willman Construction at the RI Arsenal. Exhibit 1, P. 1.

8. On March 8, 2019, the RI Arsenal acknowledged receipt of the Complainant’s FOIA request. Exhibit 1, P. 2.

9. In its March 8, 2019 communication, the RI Arsenal stated it could not “provide a response to your request within the FOIA twenty (20) working-day statutory timeframe.” Exhibit 1, P. 2.

10. RI Arsenal stated it could not comply with the 20 day deadline because the request “involves records or information that was obtained from a non-governmental source i.e. the contractor. Therefore, once the search for responsive documents is complete the law requires the Government to provide the Contractor with a reasonable opportunity to present its argument regarding the release of its information.” Exhibit 1, P. 2.

11. This purported reason for the delay is not prescribed by FOIA and an agency may only extend the time for “unusual circumstances” which include:

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. 5 U.S.C. 552(a)(6)((B)(iii)(I-III).

13. The RI Arsenal did not state that any of these “unusual circumstances” were applicable to the Complainant’s request.

14. On April 17, 2019, Complainant’s attorney sent an email requesting a status report on the request. Exhibit 1, P. 3.

15. RI Arsenal did not respond to the April 17, 2019 inquiry.

16. On April 24, 2019, Complainant’s attorney sent another request for a status report of its FOIA request. Exhibit 1, P. 3.

17. On April 29, 2019, the RI Arsenal indicated the search for records was complete but it was required to “give the contractor an opportunity to identify any confidential information that may be exempt from release under the FOIA.” Exhibit 1, P. 4.

18. Under subsection (b)(3) of FOIA, “trade secrets and commercial or financial information obtained from a person and privileged or confidential” are exempt from disclosure. 5 U.S.C. 552(b)(3).

19. The Department of the Army’s Regulation 25-55 for the Freedom of Information Act states that confidential information “must contain trade secrets, or commercial or financial

records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government purpose." Exhibit 2, P.4.

20. Complainant's FOIA request does not request any information that would include Willman Construction's confidential or privileged commercial or financial information.

21. Because Laborers' Local 309 has information that Willman Construction has worked at the RI Arsenal, but has failed to pay fringe benefits for its laborers/employees, Complainant's request seeks construction contracts executed by Willman Construction, performance or payment bonds issued in conjunction with these contracts, certified payroll records and invoices submitted by Willman Construction, and payments made to Willman Construction.

22. Based on a review of contracts between the RI Arsenal and Willman Construction received in 2016, the contracts requested are standard forms used by the U.S. Army (Standard Form 1442). The contracts include the basic terms such as the amount of the contract, the contract period, the scope of work, and a variety of other statutory or regulatory contracting requirements. The contracts do not require a contractor to include any financial information such as balance sheets, profit and loss statements, or any proprietary information.

23. In addition, copies of performance and payment bonds provided by Willman Construction would have been prepared by a surety and, by their very purpose, must be disclosed to those seeking to make claims under the bonds, in the event of non-payment by Willman Construction. See 40 U.S.C. 3133(a) "Rights of persons furnishing Labor or Material to Copy of Bond."

24. Copies of certified payroll records or reports submitted by Willman Construction are required under the Davis Bacon Act to ensure compliance with the same Act. 40 U.S.C. 3141.

Again, these are standard forms. RI Arsenal has not communicated a policy or position regarding the release of the certified payroll records or the information contained with those records. However, Complainant acknowledges that private information contained within these records, such as social security numbers, are subject to an exemption in subsection (b)(6) of FOIA. 5 U.S.C. 552(b)(6). Nonetheless, this information is easily redacted and should not cause a delay of more than three months.

27. Finally, invoices submitted by Willman Construction and payments made to Willman Construction do not include any commercial or financial information that could be considered confidential. Rather the invoices and payments are directly related to Willman Construction's performance pursuant to the contracts executed by Willman, which are not exempt from disclosure.

28. On May 22, 2019, Complainant's attorney sent another email asking for a status report on the FOIA request and asking for an explanation about what information could be "confidential in light that we were asking for public contracts for construction, related bonds, payroll records and payments made to Willman?"

29. The RI Arsenal did not respond to this email.

30. Throughout this entire time, RI Arsenal has not provided "an estimated date on which the agency will complete action on the request" as required under 5 U.S.C. 552(a)(7)(B)(ii).

31. Thus, RI Arsenal's withholding of the requested records for more than three months, without providing any "unusual circumstances" does not comply with FOIA's timelines and requirements.

32. Further, the Complainant has not requested any records that could be considered trade secrets, proprietary information, or financial or commercial information that is privileged or confidential.

33. Moreover, the last communication from RI Arsenal to the Complainant was on April 29, 2019, or more than 40 days ago.

34. The failure to respond to inquiries and the failure to turn over the records, despite the U.S. Army acknowledging that the records have been collected, shows a lack of diligence by RI Arsenal. “This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.” 5 U.S.C. 552(a)(6)D(ii).

34. Therefore, the RI Arsenal’s continued withholding of the requested information is in violation of FOIA.

35. Accordingly, the Complainant seeks an Order from this Court for the production of records improperly withheld from the Complainant. 5 U.S.C. 552(a)(4)(B).

36. In addition, if the Court grants the relief requested, the Complainant is entitled to reasonable attorney fees and other litigation costs reasonably incurred. 5 U.S.C. 552(a)(4)(E)(i).

WHEREFORE the Complainant, Central Laborers’ Pension Fund, prays for the following relief pursuant to the Freedom of Information Act:

A. An Order directing the United States Army Material Command - Rock Island Arsenal to produce the records requested by the Central Laborers’ Pension Fund pursuant to 5 U.S.C. 552(a)(4)(B); and

B. An Order directing the United States Army Material Command - Rock Island Arsenal to pay the Complainant’s reasonable attorney’s fees and litigation costs pursuant to 5 U.S.C. 552(a)(4)(E)(i).

Respectfully submitted,

CENTRAL LABORERS' PENSION  
FUND, Plaintiff

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